

December 2, 2022

Via CM/ECF and Email

The Honorable Sean H. Lane
United States Bankruptcy Court for the
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Re: In re 85 Flatbush RHO Mezz LLC, *et al.*,
Case No. 20-23280-shl (Bankruptcy S.D.N.Y.) (Jointly Administered)

Dear Judge Lane:

TH Holdco, LLC ("TH Holdco") submits this letter, as requested by the Court yesterday, to provide the Court with the current status of the key remaining closing deliverables and information under the Plan and Purchase Agreement as attached to and confirmed by the Confirmation Order (Docket No. 280) and the Order Resolving TH Holdco LLC's Motion to Enforce Debtors' Obligations to Cooperate with Closing on Credit Bid (Docket No. 336), which order was negotiated with the Debtors and entered on an agreed basis (the "Enforcement Order").

Under Section 11.1 of the Plan:

On the Closing Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, as set forth in the Purchase Agreement, all property of the Debtors' estates shall vest in the Purchaser free and clear of all Claims, liens, encumbrances, charges and other interest, except as provided pursuant to this Plan and the Confirmation Order.

As the Court will recall from the status hearing on the morning of November 9, 2022, TH Holdco agreed to close on November 9, 2022 based on the Debtors' agreement to cooperate post-closing as set forth in the Enforcement Order, including:

ORDERED, that as soon as possible, but in any event within five (5) business days of entry of this Order, the Debtors and/or the Debtors' applicable professionals shall:

. . .

- iii. Provide to TH Holdco current copies, together with the plan for delivery, of (a) employee files; (b) the payroll register with paid time off (PTO) accruals; and (c) current payroll amounts accrued through November 9, 2022;
- iv. Provide to TH Holdco a list of onsite hardware, including, but not limited to computers, servers, and network infrastructure, with all corresponding passwords, together with a plan for delivery:
- v. Provide to TH Holdco a plan of delivery for control of reputation management handles and administration, including Google My Business Listing;
- vi. Provide to TH Holdco (a) registrant information and account access information for all URLs and domains; and (b) a plan for delivery of control of electronic files for logos and associated trademarks;

. . .

- viii. Provide all open post-petition invoices and payment information related to post-petition vendors and suppliers to the Properties by estate;

. . .

ORDERED, that the Debtors shall cooperate with such other and further requests for cooperation as TH Holdco shall reasonably request in order to effectuating the Closing of the transactions and the implementation of the Confirmed Plan, the Confirmation Order, and/or the Purchase Agreement;

. . .

ORDERED, that TH Holdco continues to have authority to terminate any post-petition contracts with any of the estates, including, without limitation, any post-petition contracts with Exodus;

. . .

ORDERED, that the Court retains jurisdiction to construe and enforce this Order and that further relief to enforce this Order may be sought upon requesting an emergency status hearing or conference with the Court.

As previously arranged with the Debtors, a representative of TH Holdco, James Cole, appeared on-site to begin to implement on-site transition items on the morning of Wednesday, November 9. Upon inquiry on November 8, Josh Spillman (the Debtors' general manager), who was the person originally designated by the Debtors to meet Mr. Cole, indicated to Mr. Cole that he would not be on-site on Wednesday, November 9 at all. Mr. Spillman attempted to move the transition to Thursday, November 10 instead and declined to find a replacement individual to meet on the closing date of November 9. After intervention from legal professionals on both sides, a new representative, Jennifer Purtell (another employee of the Debtors), was designated by the Debtors to meet Mr. Cole. However, Ms. Purtell had her email address deactivated without her being advised of the deactivation, making coordination of the on-site transition very difficult. Eventually, she did meet Mr. Cole on-site on Wednesday morning but given she did not have the same level of access (e.g. no master key, access to offices, etc.), that has exacerbated the issues with the transition.

Mr. Spillman had agreed to meet with Mr. Cole of TH Holdco onsite at the property on the morning of Thursday, November 10, 2022 but did not show at that time and was not reachable on his mobile phone. Mr. Spillman ultimately did show up on the afternoon of November 10, 2022 but was generally unhelpful, including, without limitation, on access codes and electronic records and therefore, Mr. Spillman was thereafter not hired by TH Holdco due to his non-cooperation.

Additionally, when Mr. Cole arrived on-site on the morning on November 9, he found several persons who appeared to be moving into the apartment portion of the property, some with plastic bags full of personal belongings. He also found a staging company, Stage One NYC, LLC, who stated they had been hired by Sam Rubin¹ and

¹ Sam Rubin is one of the Debtors' insiders and is also the son of Lipa Rubin, who is another of Debtors' equity investors.

were in the process of moving furniture into approximately 18 of empty apartments. There were also further persons in apartments other than in the two units with signed leases provided by Debtors' counsel. When Mr. Cole attempted to talk with the persons in the building, they either would refuse to speak with him or would give vague answers such as "they were there to visit someone". Some said they were there with the permission of Sam Rubin.

TH Holdco's counsel immediately reached out to Debtors' counsel to address the issue by email and by phone. After determining the situation was continuing and would not be remedied, TH Holdco's counsel reached out to this Court requesting an emergency conference which was then held at 3 pm Eastern on Wednesday, November 9, 2022. Only Lori Schwartz from Debtors' counsel attended that conference on behalf of the Debtors.

TH Holdco called the police, a security company and a locksmith to the premises on November 9, 2022. Mr. Cole and the police did a floor by floor walk through of the premises and found at least five (5) occupied units without leases. Many of the occupants refused to open the door to the unit they were occupying. Some of the occupants claimed they had a lease but none were unable to provide a copy of any lease or evidence of payment of rent. Some occupants claimed to be occupying an apartment but upon inspection, their apartments contained no furnishings whatsoever. Some of the occupants attempted to move to another unit after being removed by the police from the unit they were initially occupying. One individual confirmed that Sam Rubin had asked him to stay in the building and stated that Sam Rubin had done the same with other individuals.

The locksmith ultimately changed the locks to vacant units to try to address this issue and TH Holdco engaged a security company on an emergency basis. Some individuals who were removed by police attempted to return in the night. At least one person without a lease returned in the middle of the night and was able to regain entry into the building. 5 of the squatters were removed by the evening of November 9, 2022 while another 8 squatters remained in the building that evening.

Sam Rubin and a representative of GC Realty Advisors, LLC arrived on the premises during the afternoon of November 9 at the request of Debtors' counsel. To TH Holdco's knowledge, at no point in this process have Lipa Rubin (Sam Rubin's father and a material equity owner in the Debtors) or Isaac Hager (who previously testified on

behalf of the Debtors in these cases) directly offered or provided any assistance to resolve the open issues.

The subcontract lease for the hotel with Exodus Transitional Services (“Exodus”) for the period January 1, 2022 to June 30, 2022 as provided to TH Holdco by Debtors’ counsel was signed by Sam Rubin. After the closing, TH Holdco sent a 30 day termination notice effective December 10, 2022. Exodus asserted it believed it had an agreement with the Debtors on the basis of discussions with Sam Rubin for another 6 month subcontract through December 31, 2022 and provided an unsigned copy of that subcontract. Exodus asserted that further subcontract was in agreed form and was only unsigned because they were awaiting approval from the Mayor’s office.²

On November 12, 2022, Shariz Ali, an employee of the Debtors responsible for financial matters, came into work. However, Mr. Ali’s access to the electronic records and his email access had also been cutoff and he generally did not have paper records. Mr. Ali provided some information he knew from memory and was paid for coming into the office that day but was not hired thereafter.

Ms. Purtell, the building engineer, the head of housekeeping and certain staff have been hired by TH Holdco.

The need for an onsite transition and the closing deliverables has been the subject of correspondence from Dentons real estate partner Chris Milenkevich since August, 2022 (as previously filed with the Motion to Enforce Cooperation) and the records, access codes and other cooperation requested were customary. This should have been a simple and orderly process rather than multiple court hearings over the course of a month. The fact that the Debtors’ equity “lost a lot of money” and were unhappy that TH Holdco’s plan was confirmed and their meritless appeal was denied on all grounds should not interfere with a professional transition.

² Sam Rubin’s personal counsel and Debtors’ counsel suggested at the December 1, 2022 hearing that Mr. Rubin was just a passive investor in the Debtors. The fact that Sam Rubin was negotiating and entering into material contracts with Exodus in 2022 suggests otherwise. This is reinforced by certain time entries in Leech Tishman’s recently filed Final Fee Application (Docket No. 356) referencing that there were calls and communications between Leech Tishman attorneys and Sam Rubin on multiple days (for instance, September 28, 2022, September 30, 2022, November 3, 2022 and November 10, 2022) including about closing related preparation and items. For instance, the November 3, 2022 call between Sam Rubin and Fred Ringel is described as “regarding closing preparation, closing obligations and providing responses to closing checklist.” There was also a conference between Mr. Ringel and Mr. Goldwasser on November 10, 2022 about “means to bring Rubin under control.” (Fee App., Electronic Page 117).

TH Holdco has generally tried to obtain the remaining closing deliverables and resolved open transition issues with Debtors' counsel and starting last week, with Sam Rubin's personal counsel but a number of issues set forth below remain unresolved. TH Holdco's operations and legal team is prepared to meet at the 85 Flatbush property next Tuesday, December 6, 2022, at noon Eastern to try to resolve as many of these issues as possible. In advance of that meeting, TH Holdco would request that the Debtors canvass all parties who may have knowledge or access to any of the items or information set forth below in advance of that meeting and/or have them attend the meeting, including, without limitation, the following persons: Sam Rubin, Lipa Rubin, any other member of the Rubin family, Isaac Hager, Josh Spillman, Sharaz Ali, David Goldwasser and other involved persons on this Property from GLC Realty and Joel Teitelbaum (who we understand to be a friend of the Rubins) and the other squatters.

1. Passcodes to any or all of the following systems: (i) the closed circuit TV system, (ii) the Debtors' email system, (iii) the Debtors' files stored in the clouds, (iv) the Debtors' Opera Property Management System, (v) the PBX Phone System and (vi) the key lock system.

More specifically:

IP addresses/ports and admin access to the following:

All servers. Examples are: Hypervisor, Domain Controller, File Server, Lock Server
All switches
All firewalls
Active Directory/Domain
All NAS or onsite backup appliances
All PCs (if standalone, not domain-joined)
All printers
All other network devices such as serial interface boxes

Admin access to the following:

All software licenses purchased by the hotel
All logins for all active email accounts as of the date of ownership transfer
Camera software admin login
Keylock software admin login

PMS software admin login
PBX system admin login
All subscription services (backup / security / etc.)

Transfer of ownership of services:

Vendor accounts such as Verizon internet/phones
Transfer of ownership/management of any cloud-managed devices (domain registration, firewall, switches, etc.)

Particular key items are electronic and/or any paper versions of any of the following business records of the Debtors:

- a. PMS - guest history, history and forecast reports, guest email addresses, booking information.
 - b. CRS – what system are they using? Any IBE data from CRS would be great.
 - c. Access to photography.
 - d. Branding and logos – access to these and all file extensions.
 - e. Historical revenue data and STR reports
 - f. Historical sales, SMERF, LNR/CNR and group information would be very helpful to have as well.
2. Emails, reports or other records of the Debtors on any computer, phone, tablet, personal or non-debtor email address or storage system, etc. and/or any paper copies of the same.
3. Anyone who has knowledge of where any of the equipment or tooling listed in the attached email is or what happened to any of the items or possession of any of that equipment or tooling or proceeds thereof.
4. The passcode with the domain name registrar to transfer the domain name www.tillaryhotel.com and/or a joint direct reach out to the domain name registrar to effectuate that transfer to Buyer without the passcode.
5. Transfer of access and passcodes/login credential to reputation management handles and administration, including Google My Business Listing and social media, including Facebook and Instagram.

6. Anyone with knowledge of when each of the squatters moved in, who allowed them to move in or remain and whether any of the squatters present or former have paid any rent or given any other consideration to any person or entity.
7. Any ability to get any of the remaining squatters to voluntarily move out this month. The occupied units are 7L (Joel Teitelbaum), 7M (Chaim Meisels), 9M (Dovid Schechter), 10A (Shallom Levy), 10J (unknown name) and 12F (unknown name).
8. Anyone with knowledge or records of the specific services rendered by Greater Shield or who negotiated the terms of the Greater Shield management fee, as reflected in the monthly operating reports (including the over \$650,000 paid to Greater Shield in October, 2022 alone³) as well as the post-petition invoices Greater Shield is claiming are unpaid⁴ and the over \$350,000 of pre-petition invoices asserted by Greater Shield as unpaid.
9. Delivery of any paper or electronic employee records.
10. What happened to the paper or electronic copies of the marketing materials and photos.
11. Input on the various unpaid invoices post-petition vendors are asserting are unpaid and the Debtors' records on unpaid post-petition invoices.
12. Anyone with knowledge on who damaged the residential system locks.
13. Details on what precisely what services GC Realty delivered including how often any GC Realty personnel were on site and what if any oversight or involvement GC Realty had on disbursements or operations.

³ Over \$1.9 million has been paid to Greater Shield over the course of the cases according to the filed monthly operating reports.

⁴ TH Holdco requested a complete set of unpaid invoices and support for the services and fees from Greater Shield directly before Thanksgiving and has not received a response.

TH Holdco will update the Court on the status of the open items after the December 6, 2022 meeting. TH Holdco will also provide a list of proposed witnesses who should be required to attend the hearing scheduled for December 12, 2022.

Very truly yours,

Dentons US LLP



Robert E. Richards

Enclosures

Cc: Lori Schwartz
Fred Ringel
Paul Aloe
Lauren Macksoud
The Office of the United States Trustee

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Richards, Robert E.

From: Richards, Robert E.
Sent: Monday, November 28, 2022 9:31 AM
To: 'Paul Aloe'; 'Lori Schwartz'
Cc: Macksoud, Lauren
Subject: 85 Flatbush

Below is a listing of the missing equipment per your request on our Wednesday afternoon call.



Robert E. Richards

Global Chair, Restructuring, Insolvency & Bankruptcy

What's Next? The answer is Talent. With more than 20,000 people, 12,000 lawyers and 200 locations, Dentons has the talent for what you need, where you need it.

D +1 312 876 7396 | M +1 630 235 2470 | US Internal 17396
robert.richards@dentons.com
[Bio](#) | [Website](#)

Dentons US LLP
233 South Wacker Drive, Suite 5900, Chicago, IL 60606-6361

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From: James Cole <jcole@ohanare.com>
Sent: Monday, November 28, 2022 9:25 AM
To: Richards, Robert E. <robert.richards@dentons.com>; Kendall Pelzer <Kendall@CanvasPG.com>; Robert Gormley <robert.gormley@tillaryhotelnyc.com>
Subject: 85 Flatbush

[WARNING: EXTERNAL SENDER]

Please see below list of missing tools and equipment:

One commercial carpet cleaner
Two commercial fan (blower)
One power washer electric
One power washer gas
Two large dehumidifiers
Two air compressors 200 psi
One large wet vacuum cleaner

Two screw guns
One hammer drill
One leaf blower
One cordless auger
Two emergency elevator key
Three electric Sanders
One grinder
One oscillating tool
One reciprocating saw
Two screwdriver set Phillips head
Two screwdriver set flat head
One electric wood plane
Two Electricians, wire, stripper
Two Electricians pliers
2 Carts (if possible)
Tool lockbox
Wood router tool
Heavy duty bench vice
Jigsaw
Circular saw
½ inch tap and dye set

JAMES COLE

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